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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,322	09/04/2003	Sujeet Kumar	2950.15US03	5849

62274 7590 02/05/2007  
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EXAMINER
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NGUYEN, CAM N

ART UNIT	PAPER NUMBER
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1754

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/655,322	<b>Applicant(s)</b> KUMAR ET AL.	
	<b>Examiner</b> Cam N. Nguyen	<b>Art Unit</b> 1754	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11/19/06 (an amendment/response).
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 11-16, 19 and 21 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-16, 19 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on originally filed is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### Response to Amendment

1. Applicants' amendment and remarks, filed November 19, 2006, has been made of record and entered. Claims 1-3, 11-13, & 21 have been amended. Claims 9-10, 17-18, & 20 have been canceled.

Claims 1-8, 11-16, 19, & 21 are currently pending and under consideration.

### Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-5, 8, 11-13, 16, & 19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,225,007 B1 "hereinafter Pat '007". Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

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It is considered that the "multiple metal oxide" of the instant claims 1 & 11 encompasses the "vanadium metal oxide" disclosed in the Pat '007. Also, it is considered both the instant claimed particles product and the particles product disclosed in the Pat '007 are the same in view of the "vanadium" metal component being claimed in the dependent claims 8 & 16.

Applicants urged, that "under the patent term rules currently in place, an earlier priority date application should not be rejected for obviousness-type double patenting over a later filed patent...." (applicants response on page 5, last paragraph). This is noted, but not found persuasive because it is not true. The purpose of the ODP rejection is to keep the applications or patents commonly assigned.

It is considered the rejection made is still application, therefore maintained.

4. Claims 1-5, 11-13, & 19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 18-20 of **U.S. Patent No. 6,387,531 B1** (hereinafter Bi '531). Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

The claimed collection of particles do not appear to be patentable distinguishing from the collection of particles disclosed by Bi '531.

5. Claims 1-5, 8, 11-13, 16, & 19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-23 of **U.S. Patent No. 6,106,798** (hereinafter Kambe '798). Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

The claimed collection of particles do not appear to be patentable distinguishing from the

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collection of particles disclosed by Kambe '798.

6. Claims 1-6, 11-14, 19, & 21 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-31 of *U.S. Patent No. 6,506,493 B1* (hereinafter Kumar '493). Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

The claimed collection of particles do not appear to be patentable distinguishing from the collection of particles disclosed by Kumar '493.

7. Claims 1-5, 11-13, & 19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of *U.S. Patent No. 6,726,990 B1* (hereinafter Kumar '990). Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

The claimed collection of particles do not appear to be patentable distinguishing from the collection of particles disclosed by Kumar '990.

***Response to Applicants' Arguments***

8. Applicants' amendment and response filed on November 19, 2006 has been fully reconsidered, but not deemed persuasive for the following reasons.

First, applicants' urging regarding *U.S. Patent No. 6,225,007 B1* is not found persuasive for the same reasons as set forth in previous office <sup>action</sup> and reinstated above.

Second, applicants' urging regarding the US Pat. 6,387,521 is not found persuasive because the instant claims are not excluding the "carbon" disclosed in the reference. Also, the

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instant claims are not claiming "mixed metal oxides", but "multiple metal oxides", which does not have to be a mixture of the metal oxides.

Third, applicants' urging regarding the US Pat. 6,106,798 is not found persuasive because the reference contains collection of particles having mixed phases of different vanadium oxides, which meets the claimed limitation on "multiple metal oxides". The instant claims are not being limited that the multiple metal oxides are different metal oxides.

Last, applicants' urging regarding the US Pat. 6,506,493 and US Pat. 6,726,990 have also been noted, but they are not found persuasive for the same reasons as above. The instantly claimed limitation on "multiple metal oxide" is not a mixed metal oxide as applicants argued and it does not limit the claim to multiple metal oxide of different metal oxides.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Conclusion

10. Claims 1-8, 11-16, 19, & 21 are pending. Claims 1-8, 11-16, 19, & 21 are rejected. No claims are allowed.

Contacts

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Primary Examiner Cam N Nguyen, whose telephone number is 571-272-1357. The examiner can normally be reached on M-F, 9:00 AM - 6:30 PM, at alternative work site.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cam N. Nguyen/

Nguyen/cnn

Primary Examiner

January 31, 2007

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